§ 1040.13 Producer milk.

"Producer milk" shall be the skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1040.9(c);

(c) Diverted by the operator of a pool plant to another pool plant; and

(d) Diverted by the operator of a pool plant or by a handler described in § 1040.9(b) to a nonpool plant, other than a producer-handler, subject to the following conditions:

(1) In any month that less than 2 days' production of a producer is delivered to a pool plant, the quantity of milk of the producer diverted during the month shall not be producer milk;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of October through March of the total quantity of producer milk for which it is the handler;

(3) Any milk diverted in excess of the limits described in paragraph (d)(2) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the total milk diverted on the last day of the month, then the second-to-the-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(4) Milk which is subject to pooling under another order, shall not be producer milk.

3. Section 1040.73(d) is revised to read as follows:

§ 1040.73 Payments to producers and to cooperative associations.

* * * * *

(d) On or before the last day of each month for producer milk received during the first 15 days of the month at not less than the Class III milk price for the preceding month, less any proper deductions authorized in writing by the producer.

[FR Doc. 81-13955 Filed 5-7-81; 8:45 am]
BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 221a

[EDR-424; Docket No. 35139]

Fare Summaries

Dated: April 23, 1981.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to revoke its requirement that certificated carriers provide fare summaries at all ticketing locations. This action is in response to a petition by American Airlines.

DATES: Comments by: July 7, 1981.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: May 26, 1981.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 35139, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: 14 CFR Part 221a, *Fare Summaries,* was adopted by the Board in ER-979, 41 FR 55865, December 23, 1976. In that rule, the Board required certificated air carriers to provide consumers with pamphlets containing concise and easily understandable information concerning the various normal and discount passenger fares offered on their interstate and overseas routes. The purpose of the rule was to provide prospective travelers with an alternative source of fare information so that consumers could make an informed choice among the types and levels of fares offered.

Each summary had to list the current fares, and the major qualifying conditions for each of the 10 most popular destinations from the origin city. The summaries had to be updated within 30 days of major changes or within 6 months for minor changes. Passengers could pick up a fare summary at any ticket-selling location, or could obtain a copy by mail.

American Airlines petitioned the Board to modify Part 221a to eliminate much of the "forbidding detail" so that the fare summaries could be more usable to the public. Delta Air Lines, in its answer, urged the Board to totally eliminate the fare summary requirement. Delta argued that elimination would benefit both carriers and the traveling public by allowing carrier marketing departments to develop the most effective means of informing the passengers of airline fares, without the burden of producing the summaries.

The Board agreed in Order 79-8-116, August 23, 1979, that fare summaries had not accomplished their hoped-for goals. We therefore granted American's petition to review the fare summaries rule. Pending completion of the examination, the effectiveness of 14 CFR Part 221a was suspended.

We have completed our examination and have tentatively decided that Part 221a should be revoked. Part 221a did not provide all the consumer benefits we anticipated. Relatively few passengers were aware that the summaries existed. A large percentage of passengers choose their flight and fare during a telephone conversation with a reservations clerk or a travel agent, so that they are not able to pick up a fare summary at a ticket sales location. Some passengers find written material concerning fares and conditions too complex to understand. The information offered was of limited value to some consumers because the summaries included only fares offered by a single carrier.

The cost burden on carriers to produce the fare summaries appeared to outweigh the benefits enjoyed by consumers. Since the Deregulation Act, discount fares and their accompanying restrictions have been changing rapidly. The fare summaries are useful only if they are kept up to date, and if the fare summary requirement were reimposed, very frequent republication of the pamphlets would be necessary. In a period when we are encouraging aggressive price competition, we will not reimpose a rule that could discourage price movement, and that we have found to be at best marginally useful.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, took effect on January 1, 1981. The Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the actions proposed here. The first three requirements are met by the discussion above. The alternative approaches would be to maintain the present rule, or

modify it to make the fare summaries more usable to the public. We have not proposed the first alternative because the rule is placing a burden on carriers with only a marginal benefit to consumers. We tentatively decided not to modify the present requirements because we believe the carriers themselves can best decide how to advertise their fares.

In addition, the analysis must include a description of the small entities to which this proposal would apply, the reporting, recordkeeping or other compliance requirements of this proposed rule, and any other Federal rules that may duplicate, overlap or conflict with it. Although the rule's effectiveness is currently suspended, total elimination of the fare summaries rule would affect approximately 25 certificated carriers that may be considered small entities under the Regulatory Flexibility Act. If the rule were revoked, these carriers would be free to choose any or no method for publicizing their fares without the burden of printing and distributing fare summaries. The proposed revocation would not impose any reporting or compliance requirements. Finally, there are no other Federal rules duplicating, overlapping or conflicting with the proposal.

Accordingly, the Civil Aeronautics Board proposes to amend Chapter II of 14 CFR, as follows:

PART 221a—FARE SUMMARIES [REMOVED]

1. Part 221a, *Fare summaries*, would be revoked.

2. The effectiveness of Part 221a would continue to be waived pending issuance of a final rule in this rulemaking.

(Secs. 204, 401, 403, 404, 411 of Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 760, 769, (49 U.S.C. 1324, 1371,1373, 1374, 1381))

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-13978 Filed 5-7-81; 8:45 am]

BILLING CODE 6320-01-M

CONSUMER PRODUCT SAFETY COMISSION

16 CFR Part 1301

Ban of Unstable Refuse Bins; Proposal to Partially Revoke the Rule as it Applies to Front-Loading, Small-Capacity, Straight-Sided Refuse Binn; Cancellation of Oral Presentation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed partial revocation of rule; cancellation of oral presentation.

SUMMARY: On March 30, 1981, the Commission published a proposed partial revocation of the ban of unstable refuse bins, 16 CFR Part 1301 (46 FR 19247). On April 27, 1981, the Commission announced an opportunity for interested persons to make an oral presentation of views on May 11, 1981, in Los Angeles, California (46 FR 23469). The Commission received no request to make a presentation of views by May 4, 1981, the closing date for such requests. Consequently, the Commission cancels the hearing on the proposed revocation.

DATE: Written comments on the proposed revocation can be submitted until May 26, 1981.

ADDRESS: Written comments should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111-18th St., NW, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Douglas Noble, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6557.

Dated: May 6, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-14181 Filed 5-7-81; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33-6315; 34-17762; File No. S7-884]

Proposed Amendments to Item 5 of Regulation S-K Regarding Disclosure of Certain Environmental Proceedings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to regulations.

SUMMARY: The Commission is publishing for comment proposed amendments to the regulations governing disclosure of environmental proceedings. The proposals would permit the omission of disclosure relating to certain environmental proceedings and would require that registrants provide interested persons with the names and addresses of the governmental authorities from which compliance-related reports about disclosable environmental proceedings may be obtained. The proposed amendments are intended to improve the quality and utility of environmental disclosure and to reduce burdens on registrants.

DATE: Comments must be received on or before September 1, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-884. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Stephen W. Hamilton (202) 272-2390, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is publishing for comment proposed amendments to Item 5 of Regulation S-K (17 CFR 229.20),[1] which govens disclosure of legal proceedings in certain filings under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).[2] These proposals would (1) establish a threshold which would permit registrants to omit disclosure about certain environmental proceedings to which a governmental authority is a party, and (2) require that registrants either disclose the names and addresses of the governmental authorities from which compliance-related reports pertaining to disclosable environmental proceedings can be obtained, or provide such names and addresses to interested persons upon written request.

The proposed amendments reflect the Commission's experience in administering the current environmental disclosure provisions, as well as recommendations made in the *Staff Report on Corporate Accountability* ("*Staff Report*") which was issued by the Commission's Division of Corporation Finance in September 1980.[3] The Commission believes that these

[1] It should be noted that, if the proposed revisions of Regulation S-K and the Guides for the Preparation and Filing of Registration Statements and Reports are adopted as proposed, Item 5 of Regulation S-K will be renumbered as Item 3. *See* Release No. 33-6276 (December 23, 1980) [46 FR 78].

[2] If these proposals are adopted, the Commission also will adopt corresponding amendments to Instruction 5 of Item 8 of Form S-18. 17 CFR 239.28.

[3] Division of Corporation Finance, Securities and Exchange Commission, *Staff Report on Corporate Accountability*, 96th Cong., 2d Sess. (Comm. Print 1980) (Senate Comm. on Banking, Housing and Urban Affairs) [hereinafter *Staff Report*].

proposals, if adopted, would improve the quality and utility of environmental disclosure to shareholders and investors and would be compatible with the procedural mandate of the National Environmental Policy Act ("NEPA").[4] In addition, the proposals would have a concomitant effect of reducing burdens on registrants.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Acting Chairman of the Commission has certified that the amendments proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

I. Background

Over the past decade, the Commission has taken several actions to improve the environmental disclosures made to shareholders and investors. These actions have been based on the Commission's recognition of the importance of environmental information to informed investment and voting decisions, and the unique mandate to consider the environment which was imposed on all federal agencies by NEPA.

The Commission's initial action in the environmental area came in 1971 when it issued an interpretive release which alerted registrants to the potential disclosure obligations that could arise from material environmental litigation and the material effects of compliance with environmental laws.[5] After an assessment of the disclosures elicited under the 1971 release, the Commission determined that more specific disclosure standards were necessary.

In 1973, the Commission adopted amendments to certain of its registration and reporting forms to require more meaningful disclosure of environmental information.[6] These amendments required disclosure of (1) the material effects compliance with federal, state and local environmental laws may have on the capital expenditures, earnings and competitive position of the registrant, and (2) any material pending or contemplated administrative or judicial proceedings involving federal, state or local environmental laws, as well as *any* environmental proceeding by a governmental authority. While these amendments called for disclosure of all environmental proceedings involving governmental authorities, the Commission recognized that a complete description of each such proceeding might cause disclosure documents to be excessively detailed without a commensurate benefit to investors. Therefore, the Commission also adopted at that time a provision which allowed registrants to group similar governmental proceedings and to describe them generically.[7]

Following litigation concerning both the denial of a rulemaking petition and the promulgation of the 1973 amendments,[8] the Commission in 1975 initiated public proceedings [9] to elicit comments on whether further rulemaking in the environmental area was appropriate. As a result of these proceedings, the Commission in 1976 amended its forms specifically to require disclosure of any material estimated capital expenditures for environmental control facilities for the remainder of the registrant's current fiscal year and its succeeding fiscal year, and for any further periods that are deemed material.[10] These provisions regarding capital expenditures and effects of compliance and legal proceedings subsequently were promulgated without substantive change as current Items 1(c)(2)(iii)[11] and 5,[12] respectively, of Regulation S-K.

The Commission has taken actions to enforce these requirements in appropriate cases [13] and has published an interpretive release concerning the scope of these requirements.[14] In addition, the Commission has continued to explore ways in which environmental disclosures can be made more meaningful to investors and shareholders while not unduly burdening registrants. In particular, the Commission's corporate governance proceeding, which was initiated in 1977,[15] elicited oral and written comments on a number of issues affecting environmental disclosure, such as the relevance of socially significant information, including matters related to the environment, to informed voting decisions.[16]

The corporate governance proceeding resulted in certain staff recommendations, as set forth in the *Staff Report*,[17] concerning the Commission's environmental disclosure provisions. The proposals in this release are based on the alternatives considered and the recommendations made in the *Staff Report*, as well as on the experience which the Commission has gained over the last decade in developing and administering its rules and regulations on environmental matters.

II. Synopsis of Proposed Amendments

A. New Threshold

Currently, Item 5 of Regulation S-K requires, among other things, disclosure of all pending or contemplated environmental proceedings to which a governmental authority is a party ("governmental proceedings"). This disclosure standard for governmental proceedings differs from, and is broader than, the standard applicable to other types of environmental proceedings, which are subject to disclosure thresholds. In particular, Instruction 5 to Item 5 specifies that a proceeding involving primarily a claim for damages must be described if the amount involved, exclusive of interest and costs, exceeds 10 percent of the registrant's current assets on a consolidated basis.

When the governmental proceedings requirement first was adopted in 1973, the Commission believed that requiring disclosure of all governmental proceedings was an effective method to inform investors and to promote environmental goal.[18] The Commission's

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[4] 42 U.S.C. 4321 et seq. Section 102(1) of NEPA provides that "to the fullest extent possible . . . the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth" in NEPA. *Id.* at 4332(1).

[5] Release No. 33-5170 (July 19, 1971) [36 FR 13989].

[6] Release No. 33-5386 (April 20, 1973) [38 FR 12100].

[7] This provision currently is contained in Instruction 5 to Item 5 of Regulation S-K.

[8] *See Natural Resources Defense Council, Inc.* v. *SEC*, 389 F. Supp. 689 (D.D.C. 1974). *See also Natural Resources Defense Council, Inc.* v. *SEC*, 606 F.2d 1031 (D.C. Cir. 1979), *rev'g* 432 F. Supp. 1190 (D.D.C. 1977). A more complete description of this litigation is contained in the *Staff Report* at 251-59.

[9] *See* Release No. 33-5569 (February 11, 1975) [40 Fr 7013].

[10] Release No. 33-5704 (May 5, 1976) [41 FR 21632].

[11] Release No. 33-5893 (November 23, 1977) [42 FR 65554].

[12] Release No. 33-5949 (July 29, 1978) [43 FR 34407].

[13] *See In re* Occidental Petroleum Corporation, Release No. 34-16590 (July 2, 1980); *In re* United States Steel Corporation, Release No. 34-16223 (September 27, 1979). *See also SEC* v. *Allied Chemical Corporation*, Civil No. 77-373, Litigation Release No. 7811 (March 4, 1977).

[14] Release No. 33-6130 (September 27, 1979) [44 FR 56924] which concerned disclosure of (1) the total costs of complying with environmental laws, (2) contemplated proceedings by governmental authorities and (3) policies concerning, or approach toward, compliance with environmental laws. It should be noted that the instant proposals would not affect the positions set forth in parts (1) and (3) of that release, or the broad interpretation of the term "proceeding" contained in part (2) of that release. The proposals would, however, eliminate the requirement to disclose *all* proceedings to which a governmental authority is a party, and accordingly the language to that effect in the 1979 release would be rescinded.

[15] *See* Release No. 34-13901 (August 29, 1977) [42 FR 44860].

[16] These comments are summarized and discussed in the *Staff Report* at 250-86.

[17] *Id.* at 284-86.

[18] *See* Text accompanying notes 6-7 *supra*.

review of the disclosure generated by the governmental proceedings provision and comments received from the public indicates, however, that this provision may not be fully accomplishing its intended results. The Commission is aware of numerous instances in which disclosures of more significant environmental proceedings have been obscured by lengthy disclosures of relatively inconsequential governmental proceedings,[19] particularly proceedings which involve small fines or relatively small capital expenditures.[20]

In the Commission's view, the overwhelming amount of information which often is elicited by the current environmental provisions results in less readable disclosure documents and makes it more difficult to identify significant environmental proceedings. This impedes the Commission's ability to fulfill its obligation under the federal securities laws of ensuring that investors and shareholders receive full and fair disclosure of all material information necessary for informed decision-making. Moreover, it appears that the current lengthy environmental disclosures, because they may tend to focus attention on less important matters, may be doing little to enhance understanding of the economic impact on the registrant of significant environmental concerns.

As a result, the current environmental disclosure system actually may hinder informed evaluations by investors and shareholders. A similar concern was expressed in the *Staff Report* after an extensive analysis of information gathered in the corporate governance hearings,[21] and in remarks made by commentators in connection with other Commission initiatives.[22]

The Commission believes that it could more fully satisfy its responsibilities under the federal securities laws if environmental disclosures were focused on significant environmental proceedings and were not interspersed with information about relatively inconsequential matters. Moreover, the Commission believes that clarity and comprehensibility of environmental disclosure effectively promotes goals of NEPA and thus conform with the Commission's mandate under Section 102(1) of that Act.[23] The Commission therefore is proposing to amend Instruction 5 to Item 5 by adding a new threshold for disclosure of governmental proceedings. The proposed new threshold also would reduce burdens on registrants.[24]

The proposed new threshold would replace the existing language in Instruction 5 which mandates disclosure of all governmental proceedings, and in its place would require disclosure of (a) all environmental proceedings, including governmental proceedings, which are material to the business or financial condition of the registrant, (b) damage actions, or governmental proceedings involving potential fines, capital expenditures or other charges, in which the amount involved exceeds 10 percent of current assets, and (c) governmental proceedings, unless the registrant reasonably believes such proceedings will result in fines of less than $100,000. The proposed threshold would be added to Instruction 5 by revising a portion of that Instruction's existing language and dividing it into three clauses, designated (a), (b) and (c). The three proposed clauses are in the alternative, and disclosure of a proceeding would be required if the provisions of any one of the clauses are satisfied. In addition, the term "proceeding," for purposes of the proposed clauses, would include all proceedings which generally involve the same issues.[25]

Proposed clause (a) would retain without change the current provision which requires disclosure of environmental proceedings that are material to the business or financial condition of the registrant. Disclosure of a governmental proceeding, as well as a proceeding involving private parties, would be required under this proposed clause if the proceeding was material to the registrant, regardless of whether the conditions of proposed clause (b) or (c) are satisfied.

Proposed clause (b) would make the disclosure requirement applicable to governmental proceedings consistent with the disclosure threshold applicable to proceedings involving claims for damages. This proposed clause would retain the current provision which requires disclosure of damage actions in which the amount involved exceeds 10 percent of current assets on a consolidated basis and, in addition, would apply this same current assets threshold to all proceedings, including governmental proceedings, which may result in monetary sanctions, capital expenditures, deferred charges or charges to income. This proposal would permit the omission of information about a governmental proceeding which is not otherwise disclosable and which involves potential fines, capital expenditures or other charges which do not constitute 10 percent of the registrant's consolidated current assets. In addition, the phrase "deferred charges or charges to income" would be included in proposed clause (b) to encompass those situations in which, for example, the registrant chooses to shut down a relatively insignificant plant, rather than make the necessary capital expenditures, and therefore must make a charge against income.[26]

Finally, proposed clause (c) would require disclosure about governmental proceedings involving potential fines, unless the registrant reasonably believes that such proceedings will result in fines of less than $100,000. The $100,000 fine threshold is based, in part, on the Commission's review of the actual fines assessed in enviornmental proceedings. This proposal would not automatically require disclosure of any proceeding in which the possible maximum fine which could be imposed

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[19] The Commission has found, for example, that environmental disclosures made by steel companies and utilities often take up several pages in the Annual Report on Form 10-K (17 CFR 249.310).

[20] Lengthy environmental disclosures typically contain information about governmental proceedings which result in fines under $100,000 and in many cases as low as $100. Similarly, information often is given about governmental proceedings which involve relatively minor capital expenditures which are incurred, for example, to obtain a regulatory permit.

[21] *Staff Report* at 285–86.

[22] For example, one commentator on the proposed revisions to Form 10–Q (which were adopted in Release No. 33–6288 (February 9, 1981) [46 FR 12480]) stated that disclosure of insignificant environmental proceedings is a significant management burden with no real benefit to the disclosure system (File No. S7–850).

[23] *See* note 4 *supra*.

[24] This proposal, by eliminating discussions about less significant matters, also should facilitate the efforts which some registrants currently are making to improve the effectiveness and readability of their environmental disclosures by using separate paragraphs or headings to distinguish general environmental information, such as broad discriptions of various legal requirements and standards, from information relating to specific environmental proceedings. The Commission believes that disclosures significant proceedings should be readily identifiable, and should not be obscured by, or buried within, general discussions, and therefore encourages registrants to continue and expand this practice.

[25] This would require aggregation of those proceedings which present in large degree the same issues, just as current Instruction 2 to Item 5 requires such grouping in determining whether the 10 percent of current assets exclusion for legal proceedings generally is available. Accordingly, registrants would be required to aggregate the potential financial consequences of proceedings which generally involve the same legal or factual issues when determining whether the thresholds in proposed clauses (a), (b) and (c) have been exceeded. This aggregation would be required even if none of the proceedings individually exceeded the proposed thresholds.

[26] The proposals are not intended to and, if adopted as proposed or in modified form, would not affect Item 1(c)(2)(iii) of Regulation S–K, which requires a registrant to consider all capital expenditures or other costs when making the aggregate disclosures required pursuant to Item 1(c)(2)(iii).

is $100,000 or more, but rather would permit registrants to consider both the amount of any potential fine and the probability that this maximum penalty, as opposed to a lesser fine, actually will be imposed. Even if disclosure of a governmental proceeding is not required under proposed clause (a) or (b), disclosure would be required under proposed clause (c) unless the registrant reasonably believes that the proceeding will result in a fine of less than $100,000. Of course, this reasonable belief would have to exist at the time the disclosure document is filed, and such belief would have to be reevaluated in connection with future filings if circumstances change with respect to a particular proceeding.[27]

The Commission believes that disclosure of fines by governmental authorities may be of particular importance in assessing a registrant's environmental compliance problems. Proceedings involving fines (as opposed, for example, to proceedings involving capital expenditures necessary to obtain regulatory permits) may be more indicative of possible illegality and conduct contrary to public policy. Accordingly, the Commission does not view a disclosure threshold related solely to a percentage of assets as appropriate in this context. At the same time, the Commission's review of environmental disclosure has shown that the significance of a governmental proceeding does not necessarily correlate with the potential monetary sanction that could be imposed, since such a proceeding, while involving a possible penalty which is great,[28] may be resolved with a sanction that is less substantial.

Proposed clause (c) would take these considerations into account and would be, in the Commission's view, a more accurate benchmark of the significance of a governmental proceeding. This proposed clause would require disclosure of governmental proceedings which, while not directly involving substantial issuer assets, are important in evaluating the issuer's environmental compliance and its impact on the issuer's operations. It also would allow the omission of disclosure about immaterial governmental proceedings which, based on the registrant's reasonable belief, will result in relatively inconsequential fines. By improving the clarity and informativeness of disclosure, the Commission believes that this proposal is consistent with its responsibilities under both the Federal securities laws and NEPA.

The Commission recognizes, however, that a reasonable belief standard for disclosure in some instances would require registrants to make difficult judgments about the ultimate outcome of a still-pending proceeding. Therefore, the Commission solicits comments on whether proposed clause (c) should contain a more definite disclosure threshold, and, if so, whether a threshold based on the actual fine imposed in a proceeding after it is completed should be adopted. The Commission also seeks comments on whether, assuming the reasonable belief standard is adopted, the $100,000 figure is an appropriate disclosure threshold.

The Commission is aware that these proposals, if adopted, may no longer provide investors and shareholders with information about all of the governmental proceedings involving a registrant, as is the case today. Information about the total number of governmental proceedings may be indicative of the registrant's policies concerning, or approach toward, compliance with environmental laws. The Commission solicits comment on the need for, and feasibility of, an additional provision which would require a brief aggregate disclosure of the number of, and total amount involved in, governmental proceedings not otherwise disclosable under the proposals. Comments on whether such a provision, if adopted, should contain an exclusion for clearly *de minimus* proceedings also would be helpful.

If adopted, the proposal also would delete the current provision which allows similar proceedings to be grouped and described generically. This provision originally was adopted because of the lack of a disclosure threshold for governmental proceedings.[29] Despite this provision for grouping on a generic basis, the disclosures of environmental proceedings involving governmental authorities have been excessively lengthy and detailed and have tended to obscure the disclosures of more significant proceedings. If the proposed new threshold is adopted, it appears that such a provision would no longer be necessary. Nevertheless, the Commission is soliciting comments on whether the grouping provision should be retained, and if so under what circumstances, if the proposed new threshold is adopted.

Finally, the Commission notes that both the Clean Air Act and the Clean Water Act contain provisions which require, upon conviction of certain offenses under those Acts, that a facility be placed on a "List of Violating Facilities" ("List") until the condition giving rise to such conviction has been corrected.[30] The Administrator of the Environmental Protection Agency also has promulgated regulations which permit the Assistant Administrator to place a facility on the List under certain other egregious circumstances.[31] So long as a facility remains on the List, no Federal agency may contract for goods, materials or services at the facility. While disclosure of placement on the List in many instances would be required under proposed clause (a) or (b), the Commission seeks comments on whether the mere fact of being placed on the List, or being notified of possible placement on the List, should be required in all instances.

B. Additional Information

As the Commission noted in its 1975 environmental proceeding, some shareholders and investors may be interested in additional environmental information beyond that required pursuant to the Commission's disclosure rules described above.[32] In 1975, the Commission proposed provisions that would have required a registrant to provide a list of its most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the previous twelve months, any applicable environmental standard established pursuant to a federal statute.[33] The Commission ultimately determined not to go forward with this proposal in part because no means existed to distinguish between significant and *de minimis* noncompliance with environmental standards.[34]

[27] Moreover, if a proceeding were omitted under proposed clause (c) and, before the issuer's next filing requiring environmental disclosure, this proceeding terminates and results in a fine of $100,000 or more, disclosure would be required by Item 1 of Part II of the Quarterly Report on Form 10-Q, 17 CFR 249.318a, which specifies that information about the termination of any proceeding disclosable under Item 5 must be provided.

[28] For example, under the Clean Air Act, 42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604, the Environmental Protection Agency may seek a civil fine of up to $25,000 per day of violation.

[29] *See* text accompanying note 7 *supra*.

[30] Section 306, 42 U.S.C. 7606, and Section 508, 33 U.S.C. 1368, respectively.

[31] 40 CFR Part 15. Pursuant to these regulations, the Assistant Administrator may place a facility on the list based on, among other things, any injunction, order, judgment, decree or other form of civil ruling by a Federal, State or local court issued as a result of noncompliance with clean air or water standards, or a conviction in State or local court for noncompliance with such standards.

[32] *See* Release No. 33-5627 (October 14, 1975) [40 FR 51656]. *See also Staff Report* at 280-82.

[33] Release No. 33-5627 (October 14, 1975) [40 FR 51656].

[34] Release No. 33-5704 (May 6, 1976) [41 FR 21632].

The Commission now believes that, assuming the proposed new threshold is adopted, it would be possible to develop a relatively simple requirement which would provide shareholders and investors with a means of obtaining specific information concerning significant environmental proceedings, without unduly burdening registrants, and without requiring the listing of information related to insignificant proceedings. As recommended in the *Staff Report*,[35] the Commission proposes to adopt an additional amendment to Instruction 5 to Item 5 which would require that registrants list (or make available upon request) the names and addresses of those governmental authorities from which compliance-related reports [36] concerning significant (*i.e.*, disclosable under the proposed threshold) environmental proceedings can be obtained.[37] The Commission requests comments on: the need for this proposal; the burdens, if any, it would impose on registrants; and any alternatives to this proposal. Commentators are also requested to consider whether the term "compliance-related reports" is sufficiently accurate and specific to achieve the intended results of the proposal.

The Commission also invites comment concerning the usefulness to investors and shareholders of the proposed listing of names and addresses of governmental authorities. Specifically, the Commission inquires whether the disclosure provided by this proposal would be used primarily in connection with voting decisions, or primarily in connection with investment decisions, or whether it would be of equal usefulness in both contexts. Information concerning the manner in which the data contained in compliance-related reports would be utilized in determining whether to purchase, hold or sell securities, or whether to give a proxy, would be especially useful to the Commission in evaluating this proposal.

In addition, the Commission solicits comment on whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the federal securities laws.

Text of Proposed Amendments

(Attention—The text of the following proposed amendments uses ► ◄ arrows to indicate additions and [ ] brackets to indicate deletions.)

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. Section 229.20 is proposed to be amended by revising Instruction 5 to Item 5 as follows:

§ 229.20 Information required in document.

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Item 5. Legal proceedings.

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Instructions.

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5. Notwithstanding the foregoing, ►an◄ administrative or judicial proceeding[s] ►(including, for purposes of this Instruction, proceedings which present in large degree the same issues)◄ arising under any federal, state or local provisions which have been enacted or adopted regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if ►(a)◄ such proceeding is material to the business or financial condition of the registrant [or if it] ►, (b) such proceeding◄ involves primarily a claim for damages, ►or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income,◄ and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis [. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.] ►, or (c) a governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000. In addition, if a proceeding is disclosable under this Instruction, the registrant shall state the name and address of each governmental authority from which any compliance-related reports relating to each such proceeding may be obtained, or, in lieu thereof, shall include a statement which indicates that such names and addresses will be furnished without charge to any interested person upon written request and includes the name and address of the person to whom such request should be directed.◄

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Authority: These amendments are being proposed pursuant to the authority in Sections 6, 7, 8, and 19(a) of the Securities Act of 1933 and Sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a) 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574, secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 780(d), 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

May 4, 1981.

Regulatory Flexibility Act Certification

I, Philip A. Loomis, Jr., Acting Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to the Commission's environmental disclosure provisions set forth in Release No. 33–6315 (May 4, 1981), if promulgated, will not have a significant economic impact on any entity subject to the amendments, and therefore will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments (1) will apply only to those entities (including small entities) that already are subject to the Commission's rules and regulations, and (2) are expected to result in a minor net reduction in costs to all

[35] *Staff Report* at 284–86.

[36] The Commission is using the phrase "compliance-related reports" to mean those communications which registrants are required to send to governmental authorities and which indicate, or may indicate, noncompliance with an applicable environmental standard or limitation.

[37] This type of proposal essentially would accomplish the same purposes and would be much more workable than a provision which would require disclosure of detailed compliance-related information (or summaries thereof) in filings with the Commission. Detailed compliance data would exacerbate the readability problems resulting from the already-existing welter of environmental disclosure which the Commission is attempting to reduce through the proposed threshold. *See also Staff Report* at 278–86.

registrants, in that the proposals would permit the omission of certain currrently mandated disclosures and would require only relatively short additional disclosures of information readily available to registrants.

Dated: May 4, 1981.

Philip A. Loomis, Jr.,
Acting Chairman.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Colorado—14)]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado Oil and Gas Conservation Commission that the Dakota Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on June 3, 1981. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on May 19, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8307, or Victor Zabel, (202) 357-8616.

Issued: May 4, 1981.

I. Background

On April 23, 1981, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in Mesa and Garfield Counties, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation underlies certain lands in Mesa and Garfield Counties, Colorado. The area is approximately six to eight miles northeast of the city of Grand Junction, Colorado, and surrounds the town of DeBeque. The area is bordered by the Book Cliffs outcrop of the Mesaverde formation to the southwest and is traversed by the Colorado River. The recommended area contains 334,995 acres and consists of all or portions of Townships 7 through 11 South, Ranges 96 through 100 West, 6th P.M. Approximately 78 percent of this land is federal acreage and 22 percent is fee. The average depth to the top of the Dakota Formation is 7075 feet. The formation ranges from 160 to 275 feet in thickness.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-19 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before June 3, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado—14), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE, Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than May 19, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below,